IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5928 OF 2005.

1. Suman Ratnakar Bagwe, Adult

2. Ajit Ratnakar Bagwe, Adult.

3. Rajesh Ratnakar Bagwe, Adult
all three residing at Ratandeep
Bagwe Bunglow, M.H. No.5 & 5A
Plot No.32, Lokmanya Tilak
Colony, Road No.3, Dadar
(East), Mumbai - 400 014. .. Petitioners.

V/s.

1. State of Maharashtra
through the Govt. Pleader.

2. Tejrajinder Singh J. Bhomar
Bagwe Bungalow, M.H.No.5A
Plot No.32, OutHouse
(Servant's Quarter) Tilak
Colony, Road No.3,
Dadar (East), Mumbai 14.

3. Brihanmumbai Municipal
Corporation, Having their
principal office At
Mahapalika Marg, Fort,
Mumbai - 400 001. .. Respondents.

Mr.R.R. Arolkar i/b. Ms.Hemani Jhariya for the Petitioners.

Mr.Mhaispurkar, AGP for Respondent No.1.

Mr.Madhav Jamdar with Mr.V.S. Lonkar & Mr.D.G. Ghate for respondent No.2.

Coram : S.R.Sathe, J.

Dated : 30th January, 2006.

ORAL JUDGMENT :

1. Heard both the learned advocates.

2. Perused papers.

3. Being aggrieved by the order passed in Chamber Summons No.126 of 2004, the petitioners/ original appellants in the above Chamber Summons have filed the present petition under Article 226 and 227 of the Constitution of India.

4. The present respondent No.2 filed a suit for declaration that the notice issued by the defendant / Brihan Mumbai Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act is bad in law and not enforceable. In that suit, the plaintiff also prayed for permanent injunction restraining him from taking any action pursuant to the suit notice. In the said suit, the present petitioners took out chamber summons for impleading them as party-defendants on the ground that they are the landlords of the suit premises.

5. The learned City Civil Court, Greater Mumbai dismissed the chamber summons on the ground that the status of the landlord is not determined and the suit in question can be decided effectively without

impleading the petitioner as party-defendant.

6. The learned advocate for the petitioner submitted that the landlords have to be regarded as necessary parties in such suit. In order to substantiate this proposition, he placed reliance on a case Adam A. Sorathia & Another V/s. Municipal Corporation of Greater Bombay & Another reported in 2001 (3) Mh.L.J. 288. That was a suit filed by the tenant against Bombay Municipal Corporation challenging notice under Section 351 of the Bombay Municipal Corporation Act for directing removal of unauthorised extension of shop premises. In that suit, landlords prayer to implead him was rejected by the Trial Court. However, this Court [Coram V.C. Daga, J.) held that the landlords have direct and substantial interest in demised premises and would be able to place all facts before trial Court for adjudicating upon issues effectually and were proper parties though relief of perpetual injunction was sought only against Municipal Corporation. However, the facts of the said case and the facts of the case in hand are quiet different. Admittedly, in the said case, the persons who applied for impleading were landlords while in the instant case the status of the present petitioners is not declared as

landlords by the competent Court. So, the ratio of the above cited case is of no help to the present petitioners.

7. It is needless to say that normally question of impleading the parties is governed by the provisions of Order 1 Rule 10 of the Civil Procedure Code, which is a general procedure. While considering this question, one has to find out whether the parties who have applied for impleading can be said to be necessary parties in the suit. Necessary parties are parties who ought to have been joined i.e. parties necessary to the constitution of the suit, without whom no decree at all can be passed. The party without whose presence the question involved in the case cannot be completely decided may be regarded as proper party and while considering the question of such party, the Court may direct to implead said party. If we take into consideration the nature of the present suit, it is very clear that even in the absence of the present petitioners, the controversy raised in the present suit can be effectively and completely settled. It cannot be said that for just and proper adjudication of the matter, presence of the petitioner is necessary. As it is, there is nothing on record to

show that the order that will be passed in the present suit is likely to affect the interest of the present petitioner particularly when the present petitioners have not been declared as landlords or owners of the said property. So, I think that the learned Trial Court has properly considered all these aspects and relying on the case reported at 1992 (2) S.C. 524, rightly dismissed the chamber summons.

8. There is no error of law in the order passed by the learned Trial Judge and as such there is no necessity to interfere with the same. Hence, this petition is rejected.

(S.R. Sathe, J.)